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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,074	10/22/2003	Steven J. Brattesani	P06460US00	9322
22885	7590	03/15/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			FRANCIS, FAYE	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/691,074	<b>Applicant(s)</b> BRATTESANI ET AL.	
	<b>Examiner</b> Faye Francis	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10 and 13 is/are rejected.
- 7) ☒ Claim(s) 6-9 and 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Group I in the reply filed on 1/21/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 1-13 will be further examined on the merits.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 5 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite because the phrase "the first card and the second card, when inserted into the pouch are located **between** the first and second surfaces" appears to be inaccurate given the teaching in the specification and the illustrations in the drawings [it appears that part of the first card or the second card overlies the top of the first and the second surfaces [note the dotted lines in Fig 1]].

Claim 13 recites the limitation "the dental product" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haarlander [5,718,336] in view of Coney [2,611,476].

Haarlander discloses in the embodiment shown in Fig 3, a package [lunch box 10] having a package cavity [interior of box 20] therein, the package having a plurality of package walls [lid portion 22 base portion 24 and display panel 40], a pouch [pocket] integrally formed in the package and having a transparent window [opening 44 having a transparent material panel 46] therein, a first card [insert 30] within the pouch having indicia [col 5 line 12] thereon, the indicia being visible from outside the package through the transparent window, the first card being movable from the pouch and a second card being capable of insertion into the pouch [col 5 lines 9-14] and a product [food] within the package cavity as recited in claim 1. Additionally, Haarlander discloses the card having a thickness [the card inherently has a thickness] and the package having a first flat surface spaced a first distance from the interior window surface, the first distance being approximately the same, but slightly larger than the thickness of the card [since the card fits within the pouch] as recited in claim 10.

Haarlander does not disclose the package having a plurality of package walls, at least some of which are transparent to show the content within the package cavity

and the first card within the pouch having indicia thereon providing information of a person as recited in claim 1.

Coney teaches the concept of providing a lunch box with transparent walls [col 1 lines 4-8]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Haarlander to have transparent wall as taught by Coney in order for the contents of the lunch box may be inspected without necessitating opening of the lunch box.

With respect to the first card within the pouch having indicia thereon providing information of a person: modified device of Haarlander has the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one having ordinary skill in the art at the time of the claimed invention to further provide the modified device of Haarlander with the indicia providing information of a person since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack* 217 USPQ 401, (CAFC 1983) and *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862. The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of indicia does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel

and unobvious functional relationship between the printed matter (e.g. indicia on the card) and the substrate (e.g. the card itself), which is required for patentability.

6. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haarlander in view of Coney as applied to claims 1 and 10 above and further in view of Licata et al. [6,672,783], hereinafter Licata.

Modified device of Haarlander has most of the elements of these claims including the pouch comprises a slit [slot 60] through which the first card or the second card may be inserted into the pouch as recited in claim 3, the package includes at least a first flat surface [the recess of the exterior wall surface 26] located opposite from the transparent window whereby the first card and the second card, when inserted into the pouch are located between the first flat surface of the package and the transparent window as recited in claim 4.

Modified device of Haarlander does not have the product is a toothbrush as recited in claim 2.

Licata is cited to show desirability to store a toothbrush within a lunch box [col 1 lines 49-52]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further provide the device of Haarlander with the toothbrush as taught by Licata in order to encourage dental hygiene.

***Allowable Subject Matter***

7. Claims 6-9 and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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8. Claims 5 and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious having a package, a pouch, a card, a transparent window, a product, a first flat surface, a second flat surface is located opposite from and facing the transparent window, whereby the first card and the second card, when inserted into the pouch are located between the first and second flat surfaces on one side of the card and the window on the other side of the card [the window being on one side of the card and the first and second flat surfaces being on the opposite side of the card], in combination with the remaining limitations of the claim. Accordingly, a claim having the same scope as claims 5 or 11, if presented for examination in response to this Office Action, would be considered to avoid the prior art.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis